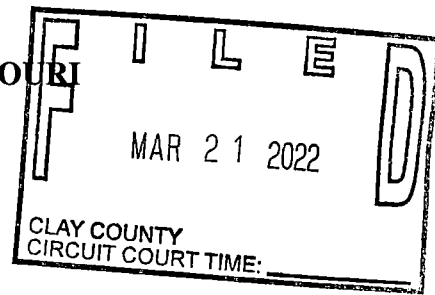


IN THE CIRCUIT COURT OF CLAY COUNTY, MISSOURI
AT LIBERTY



SAVE A CONNIE, INC. d/b/a
AIRLINE HISTORY MUSEUM,

Plaintiff,

v.

EXECUTIVE BEECHCRAFT, INC.,

and

THE CITY OF KANSAS CITY, MISSOURI

Defendants.

Case No. 19CY-CV06456
Div. 3

**FINAL JUDGMENT IN FAVOR OF DEFENDANT EXECUTIVE BEECHCRAFT, INC.
AS TO PLAINTIFF'S FIRST AMENDED PETITION**

AND

**FINAL JUDGMENT IN FAVOR OF DEFENDANT EXECUTIVE BEECHCRAFT, INC.
AND AGAINST PLAINTIFF ON DEFENDANT'S COUNTERCLAIM**

On the 3rd day of December 2021, this case came before the Court for bench trial. Plaintiff Save a Connie, Inc. d/b/a Airline History Museum ("AHM") appeared through its attorney, William M. Quitmeier, and by its representative, John Roper.

Defendant Executive Beechcraft, Inc. ("EBI") appeared through its attorneys, B. Scott Tschudy and Sam P. Heaney, and its representative, Doug Drescher. Defendant EBI's in-house counsel, Matthew Klein, was also present.

The Court heard testimony from Messrs. Roper and Drescher. After having reviewed the Court file, having heard and seen the witnesses testify, having heard and reviewed the evidence presented, having heard statements of counsel, and being fully apprised in the circumstances, the Court makes the following findings and enters the following judgments.

FIRST AMENDED PETITION FOR DECLARATORY JUDGMENT AND DAMAGES

1. The Court's prior Orders disposed of all other issues and claims in AHM's First Amended Petition for Declaratory Judgment and Damages (the "First Amended Petition), specifically Counts I and III, except for the following issues and claims which were presented to the Court for resolution at the December 3, 2021, bench trial:

a. Count II of AHM's First Amended Petition pertaining to AHM's allegations

that:

- i. EBI was unjustly enriched because AHM incorrectly paid it rent of \$61,500.00; and
- ii. AHM was damaged due to EBI's 2014 refusal to allow AHM to display a DC-8 aircraft.

2. EBI's Counterclaim for unpaid rent, statutory double rent as a holdover tenant, unpaid utilities, and possession of the subleased premises was also presented to the Court for resolution at the December 3, 2021, bench trial.

3. At the December 3, 2021, bench trial, AHM conceded the statute of limitations expired on its claim that EBI was unjustly enriched in the amount of \$61,500.00 for rent AHM paid. The Court agrees, and therefore this claim is dismissed with prejudice and judgment is entered for EBI and against AHM on AHM's claims in Count II of its First Amended Petition that it improperly paid EBI rent of \$61,500.

4. The Court found in its prior Orders that since the early 1970s, EBI or its predecessors have leased certain ground and improvements at the Charles B. Wheeler Downtown Airport (the "Airport") from the City of Kansas City, Missouri (the "City") pursuant to a Fixed Based Operations and Lease Agreement (the "Master Lease").

(Order of Partial Judgment filed December 1, 2020.)

5. AHM and EBI entered into a Sublease Agreement dated June 5, 2000 (the “Sublease”), regarding certain land located on the west side of the Airport located at 201 Lou Holland Drive. On December 1, 2020, the Court entered an Order granting EBI’s Motion for Partial Summary Judgment finding “...that the termination date of the Sublease between Plaintiff and Defendant EBI is December 31, 2020.”

(Order of Partial Judgment filed December 1, 2020.)

6. The Court finds that on May 15, 2014, AHM sent an email to EBI, proposing the display of a DC-8 aircraft scheduled to arrive on June 14, 2014, to be parked on the ramp adjacent to a L-1011 aircraft. AHM stated: “We do intend for the short term to maintain an active registration and airworthiness certificate. The aircraft [DC-8] will be placed on a short-term preservation maintenance schedule until such time we determine the ultimate use.” AHM also stated that it did not see “any issues of interference with the VOR [Very High Frequency Omnidirectional Radio Range].”

(Plaintiff’s Trial Exhibit 28.)

7. The Court finds that Section Four of the Sublease, titled “Use of the Premises,” provides in part:

a) **Master Lease.** Lessee acknowledges it has reviewed the Master Lease, as amended, and that it is fully aware of all of its terms. Lessee acknowledges that its use of the Premises is subject to all requirements of the Master Lease as if Lessee were the prime lessee of the Premises under the Master Lease.

b) **Exclusive and Non-Exclusive Use.** *Subject to the other terms of this Lease and the Master Lease*, Lessee shall have the right of exclusive use of all areas shown within the outlined Premises on Exhibit “B” ***except for those areas indicated by cross-hatching on Exhibit “B”***. Those portions of the Premises shown by cross-hatching (the “Non-Exclusive Area”) are available for use by others at the Airport, subject to the Airport’s Rules and

Regulations. [Emphasis added.]

(Defendant EBI's Trial Exhibit 108 with attached Exhibit "B" that shows cross-hatching.)

8. The Court finds that on May 30, 2014, EBI rejected AHM's May 15, 2014, proposal to display a DC-8 aircraft scheduled to arrive June 14, 2014, stating:

[W]e do not authorize the addition of another aircraft to the ramp surrounding the AHM hangar (hangar 9). Per sublease agreement Section Four, b, the ramp is designated for non-exclusive use, which you also recognized and addressed in a letter to Joe Behling in January of 2014.

(Plaintiff's Trial Exhibit 28.)

9. The Court finds that the cross-hatching on Exhibit B to the Sublease references the non-exclusive ramp space that is and must remain available for use by others. Parking/displaying of the DC-8 aircraft would interfere with that non-exclusive use.

(Defendant EBI's Trial Exhibit 108 with attached Exhibit "B" that shows cross-hatching.)

10. The Court finds that Section 1.3 of the Master Lease titled "Use of Premises" provides:

Sec. 1.3 Use of Premises. Lessee may use the Premises for the purpose of a Fixed Base Operation at the Airport as provided for in accordance with this Lease as set forth in **Article V**. Any unauthorized use of the Premises shall constitute acceptable grounds for immediate termination.

(Plaintiff's Trial Exhibit 1, Part I, Article I, Sec. 1.3.)

11. The Court finds that Article V, **Sec 5.4. Prohibited Uses** of the Master Lease, identifies prohibited uses that include, among other things, "[A]ny use prohibited by law or regulation" or "[S]torage of partially disassembled aircraft on ramp."

(Plaintiff's Trial Exhibit 1, Part I, Article V, Sec. 5.4.C. and Sec. 5.4.F.)

12. The DC-8 aircraft that AHM requested to be displayed has never been flown to the Airport and the aircraft remains in Ohio, and AHM has not paid any of the "DC-8 Estimated

relocation Expenses” shown in Plaintiff’s Trial Exhibit 22.

(Trial testimony of John Roper.)

13. Judgment is granted in favor of EBI and against AHM on AHM’s remaining claims in Count II of AHM’s First Amended Petition that EBI “refuses and fails to allow” AHM to display a DC-8 aircraft “which has resulted in substantial monetary damages.”

The Court concludes as a matter of law that the language in both the Sublease and the Master Lease provides EBI discretion to deny AHM’s request to display the DC-8 aircraft, as AHM’s use of the subleased Premises is limited.

The Court also denies as moot AHM’s request for the Court to determine whether the “fuel farm” is included within the subleased Premises since the Sublease has terminated.

In addition, the Court also concludes that AHM has not incurred any damage as a result of EBI’s refusal to allow the DC-8 aircraft to be displayed. AHM’s only trial witness, John Roper, testified that AHM has not paid any of the purported damages shown in Plaintiff’s Trial Exhibit 22. The Court also finds that AHM’s purported damages shown in Plaintiff’s Trial Exhibit 22 are speculative and are not supported by competent and substantial evidence. The Court further finds that because the Sublease terminated December 31, 2020, and the DC-8 aircraft at issue is still located in Ohio, AHM will never incur damages, nor has AHM identified any damages it suffered, relating to the display of the DC-8 aircraft at the Airport.

COUNTERCLAIM FOR POSSESSION, RENT, AND OTHER CHARGES

14. The Court finds the Master Lease between the City and EBI provided in part:

Sec. 2.5. Airline Museum. As identified at Parcel D and set forth in Exhibit “B”, the Hangar leased to the Airline Museum shall be leased to Lessee at the reduced ground (improved and unimproved) and building rental rates set forth in Exhibit “B” for as long as it remains a non-profit airline museum. The Rent for the Airline Museum shall be adjusted annually as set forth in Sec. 2.2 Adjustments to Rent above.

(Plaintiff's Trial Exhibit 1, Part I, Article II, Sec. 2.5.)

15. The Court finds that on September 9, 2019, the City and EBI entered into a Sixth Amendment to the Master Lease, which deleted Sec. 2.5 Airline Museum in its entirety with an effective date of December 1, 2019.

(Defendant EBI's Trial Exhibit 107.)

16. The Court finds that Doug Drescher testified that the City would and did begin to charge EBI rent for the subleased Premises in December 2019.

(Testimony of Doug Drescher)

17. The Court finds that by letter dated September 27, 2019, EBI notified AHM that since the City would start to charge EBI rent for the subleased Premises starting December 2019, that EBI would start to charge AHM rent for the subleased Premises starting December 2019.

(Defendant EBI's Trial Exhibit 117.)

18. The Court finds that on December 5, 2019, EBI sent AHM an invoice for rent for the subleased Premises in the amount of \$3,256.02 for the month of December 2019 as well as an invoice for rent for the subleased Premises in the amount of \$3,256.02 for the month of January 2020.

(Defendant EBI's Trial Exhibit 119.)

19. The Court finds that on January 21, 2020, EBI sent AHM a letter advising that AHM was in default under the Sublease as it had failed to pay rent for December 2019 or January 2020.

(Defendant EBI's Trial Exhibit 120.)

20. The Court finds that EBI sent AHM an invoice for rent in the amount of \$3,256.02 for the subleased Premises for each month in the year 2020, but AHM never paid any rent in 2020.

(Trial testimony of Doug Drescher and John Roper.)

21. The Court finds that the amount of rent EBI invoiced AHM from December 2019 to December 2020 totals \$42,328.26.

(Trial testimony of Doug Drescher.)

22. The Court finds that on December 3, 2020, EBI sent AHM a letter advising that the Sublease would terminate December 31, 2020, and that AHM should vacate the subleased Premises by that date.

(Defendant EBI's Trial Exhibit 118.)

23. The Court finds that as of trial on December 3, 2021, AHM had not vacated the subleased Premises and rent continues to accrue at the rate of \$3,256.02 each month.

(Trial testimony of John Roper and Doug Drescher.)

24. The Court finds that AHM has not paid any of the invoices for rent that EBI began to send AHM in December 2019 and continues to send to AHM.

(Trial testimony of John Roper and Doug Drescher.)

25. The Court finds that Section Six of the Sublease states: "Lessee [AHM] shall pay for all utilities required by its operation"

(Plaintiff's Trial Exhibit 6, Section Six, Services, Utilities and Taxes.)

26. The Court finds that by letter dated February 5, 2019, to John Roper of AHM and Frank Taylor of EBI, the City requested that AHM's utility bill for the months of September 2018 through February 2019 in the amount of \$3,790.52 be paid, and EBI paid this bill in full.

(Defendant EBI's Trial Exhibit 111.)

27. The Court finds that by letter dated June 19, 2019, to Frank Taylor of EBI, the City requested that AHM's utility bill for the months of March 2019 through June 2019 in the amount

of \$1,971.28 be paid, and EBI paid this bill in full in the amount of \$2,487.97, with said payment including utilities for July 2019 (an additional \$516.69). AHM has not paid this bill.

(Defendant EBI's Trial Exhibits 113 and 114.)

28. The Court finds that EBI also paid AHM's utility bill for the months of August 2019 through November 2019 in the amount of \$2,158.29, which AHM has not paid.

(Defendant EBI's Trial Exhibit 115.)

29. The Court finds that EBI paid AHM's utility bill for the months of December 2019 through December 2020, totaling \$6,339.19, which AHM has not paid.

(EBI's Statement of Uncontroverted Material Facts in Support of its Motion for Summary Judgment, filed February 10, 2021, Exhibit A, Affidavit of Frank Taylor, ¶ 19; trial testimony of Doug Drescher.)

30. The Court finds that AHM's electric meter at the Airport is shown on the City's records as Acct/Meter #20 and FBO/Meter No. 133-153-903, and the City provided EBI with a chart that shows "Electrical Usage by Tenants at D/T Airport" for January 2020 through October 2021, and the amount for Acct/Meter #20 and FBO/Meter No. 133-13-903 totals \$4,450.43 for January 2021 through October 2021.

(Defendant EBI's Trial Exhibits 116 and 132 [or 32]; trial testimony of Doug Drescher.)

31. The Court finds that EBI has paid, and AHM has not paid, AHM's utility bills for December 2019 through October 2021.

(Trial testimony of Doug Drescher.)

32. The Court finds that AHM has not reimbursed EBI for any of the utility bills that EBI paid on AHM's behalf.

(Trial testimony of John Roper and Doug Drescher.)

33. As of October 2021, EBI had paid the City \$19,226.40 for utilities used by AHM.
(Trial testimony of Doug Drescher.)

34. The Court concludes as a matter of law that under the terms of the Sublease, as amended, and the Master Lease, as amended, EBI could charge AHM rent of \$3,256.02 a month beginning December 1, 2019.

35. The Court grants EBI judgment against AHM in the amount of \$42,328.26 for unpaid rent from December 2019 to December 2020.

36. The Court concludes as a matter of law that AHM is a holdover tenant as of January 1, 2021, since AHM remains in possession of the subleased Premises without EBI's consent after the term of the Sublease expired, and that EBI is entitled to the recovery of statutory double rent from AHM from January 1, 2021, until AHM vacates the subleased Premises.

37. The Court concludes as a matter of law that EBI is entitled to immediate possession of the Subleased premises.

38. The Court grants EBI judgment against AHM in the amount of \$78,144.48 for unpaid double rent from January 2021 through December 2021, with rent accruing at the rate of \$6,512.04 each month thereafter until AHM vacates the subleased Premises.

39. The Court concludes as a matter of law that the Sublease requires AHM to pay for utilities used in the subleased Premises and that the Master Lease requires EBI to pay for the utilities AHM used in the subleased Premises if AHM did not pay the utilities.

40. The Court grants EBI judgment against AHM in the amount of \$19,226.40, which EBI paid to the City on behalf of AHM for the utilities AHM used in the subleased Premises from September 2018 to October 2021.

41. The Court further finds that EBI is entitled to be reimbursed by AHM for any utility bills EBI pays to the City on AHM's behalf for utilities used by AHM in the subleased Premises after October 2021, until AHM vacates the subleased Premises.

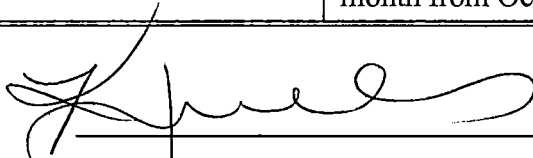
IT IS THEREFORE ORDERED that EBI shall have immediate possession and restitution of the subleased Premises unlawfully possessed by AHM and generally located at 201 Lou Holland Drive, Clay County, Kansas City, MO 64116.

IT IS FURTHER ORDERED that costs are assessed against AHM.

IT IS FURTHER ORDERED that AHM shall pay the following damages to EBI:

DAMAGES OWED TO EBI AS OF DECEMBER 3, 2021	
DESCRIPTION	AMOUNT
RENT FROM DEC. 2019 to DEC. 2020	\$42,328.26
DOUBLE RENT FROM JAN. 2021 to DEC. 2021*	\$78,144.48
INTEREST	0.00
LATE FEES SET OUT IN LEASE	0.00
ANY OTHER AMOUNTS DUE UNDER THE LEASE (UTILITIES TO OCT. 2021)**	\$19,226.40
ATTORNEY FEES (IF APPLICABLE)	N/A
COURT COSTS TO DATE (Deposition and transcript costs)	\$564.40
OTHER (DESCRIBE)	0.00
DAMAGES OWED TO DEFENDANT EBI AS OF DECEMBER 3, 2021	\$140,263.54 with interest at the rate of 9.0% per annum until paid *Rent accrues at the rate of \$6,512.04 per month. **Utilities accrue each month from Oct 2021.

3/21/2022
Date


Honorable K. Elizabeth Davis